Legal Assistance Note

Payday Loans: The High Cost of Borrowing Against Your Paycheck

ATTENTION: ALL ACTIVE MILITARY PERSONNEL
If your (sic) in need of some FAST cash, we are here to accommodate your request in the quickest, easiest, and most convenient way for you.[1]

Short On Cash?
Military Financial Network offers Advance Pay loans exclusively to the active duty military. Unlike some competitors who limit the amount you can borrow to a few hundred dollars, with MFN, your income is your credit.[2]

If you surf the Internet, check out newspaper advertisements, or just drive off post, you have seen advertisements like the ones above for payday loans. Legal assistance attorneys (LAA) often deal with the aftermath of payday lending. Rarely does the service member emerge from these situations in better financial condition and often only gets deeper in debt.

Payday loans go by a variety of names, including "deferred presentment," "cash advances," "deferred deposits," or "check loans." They all work basically the same way: the consumer provides the lender a current or post-dated check written on his bank account for the amount borrowed plus a fee. The fee is stated as either a percentage of the check or loan amount or in a dollar amount. This fee translates into annual percentage rates typically not less than 390% and averaging close to 500%.[3] The check is then held for one to four weeks (usually until the consumer's payday), at which time the consumer redeems the check by paying the face amount, allows the check to be cashed, or pays another fee to extend the loan. To qualify, consumers need only be employed for a period of time with the current employer, maintain a personal checking account, and show a pay stub and bank statement.[4] For military members, a Net Pay Advice (formerly a Leave and Earnings statement) is often all that is required. Credit checks or other inquiries about ability to repay are not routinely performed.

Cash-strapped consumers can rarely repay the entire loan on payday because that leaves little or nothing to live on until the next paycheck. Lenders encourage consumers to rollover or refinance one payday loan with another. This results in the consumer paying another round of charges and fees and obtaining no additional cash in return. Further, payday lenders often threaten to use the criminal justice system to collect these debts or routinely file criminal charges when a check is returned for insufficient funds.[5]

For legal assistance attorneys assisting soldiers, determining whether payday loans and the accompanying abuses violate state and federal laws often depends on state law. The states fall into three categories: states requiring payday lenders to comply with the small loan or criminal usury laws; states that permit payday lenders to operate and charge any interest rate or fee the parties to the loan agree to; and states that explicitly authorize payday lending.[6]

In twenty states, the Virgin Islands, and Puerto Rico, payday lenders must comply with the state's small loan or criminal usury laws.[7] These laws typically contain extensive provisions specifying the maximum loan amount, the maximum or minimum term, the maximum interest rate and permitted charges, and the penalties for charging excessive interest and other violations.[8] Since the allowable interest rates and fees are substantially below what the payday industry charges, the lenders in these states usually operate illegally by ignoring the small loan laws. It is in these states where the lenders have the greatest incentive to disguise the transactions.

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1. Force One Loans Homepage, *Force One*, *at* http://www.force1loans.com (last visited Jan. 17, 2001).

2. Military Financial Network, Inc., *Short on Cash?* (New Customers Page), *at* http://www.militaryfinancial.com/Adv_Pay/New_Cust/index.htm (last visited Jan. 17, 2001).

3. *See* NATIONAL CONSUMER LAW CENTER, THE COST OF CREDIT: REGULATION AND LEGAL CHALLENGES 278-82 (2d ed. 2000) [hereinafter NCLC, THE COST OF CREDIT].

4. *Id.* at 280.

5. *Id*.

6. *See id.* at 281.

7. *Id*. at 280 (these states are Alabama, Alaska, Arizona, Connecticut, Georgia, Indiana, Maine, Maryland, Massachusetts, Michigan, New Jersey, New York, North Dakota, Oklahoma, Pennsylvania, Puerto Rico, Rhode Island, Texas, Vermont, Virginia, Virgin Islands, and West Virginia).

8. *Id*.

In eight states, the small loan laws permit payday lenders to operate and charge any interest rate or fee that the parties to the loan agree to pay.[9] These lenders must usually comply with other provisions of the state's small loan statutes.

In twenty-three states and the District of Columbia, specific laws authorize payday lending.[10] Generally, these laws require either licensing or registration. They typically specify a maximum term and maximum amount of the loan and fix the interest rate or fees to be charged.[11] While these fees seem small in the abstract, $15-$33 per $100, they translate into enormous annual percentage rates. For example, one writes a personal check for $115 to borrow $100 for up to fourteen days. The payday lender agrees to hold the check until the borrower's next payday. In this example, the cost of the initial loan is a $15 finance charge which equates to a 391% annual percentage rate.[12]

The first line of defense raised by payday lenders sued in states where these loans are illegal is to claim that the transaction is really not a loan. The lenders characterize these deals as deferred presentment of a check.[13] In category one states, the courts uniformly pierce this smoke screen to hold that the transaction is, in substance, a loan.[14] Several consequences flow from this fundamental finding. The lender violates the state usury law because the usury cap is exceeded. In small loan states, the lender violates the law because the lender ignores licensing and the Truth in Lending Act (TILA)[15] requirements. Additional ammunition for payday loans falling within the purview of the TILA is found in a recent change to the Federal Reserve Board Commentary on the Truth in Lending Act (Regulation Z).[16] The Commentary amends the definition of "credit" to specifically include payday loans and defines payday loans as:

> Transactions in which a cash advance is made to a consumer in exchange for the consumer's personal check, or in exchange for the consumer's authorization to debit the consumer's deposit account, and where the parties agree either that the check will not be cashed or deposited, or that the consumer's deposit account will not be debited, until a designated future date.[17]

Further, a fee charged in connection with such loans would typically constitute a finance charge.[18] If the creditor regularly extends credit and imposes a finance charge, that lender must provide TILA disclosures.[19] Having the Federal Reserve Board step into this fray is important because the lenders take the position that the transactions are not loans but rather deferred presentment of checks.[20] Even more insidiously, some lenders structure these transactions as purported catalogue sales and sale-leaseback arrangements. The Federal Reserve Board

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9. *Id*. at 281 (these states are Delaware, Idaho, Illinois, New Mexico, Oregon, South Dakota, and Wisconsin).

10. *Id.* (these states are Arkansas, California, Colorado, the District of Columbia, Florida, Hawaii, Iowa, Kansas, Kentucky, Louisiana, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, North Carolina, Ohio, Oklahoma, South Carolina, Tennessee, Utah, Washington, and Wyoming).

11. *Id.*

12. Office of Consumer and Business Loans, Federal Trade Commission, Federal Trade Commission Consumer Alert: Payday Loans=Costly Cash (Feb. 2000), *available at* http://www.ftc.gov/bcp/menu-credit.htm.

13. Other attempts to claim the transaction is not really a loan include the sale-leaseback or the catalog sale disguise. Under a sale-leaseback arrangement, rather than offering a direct loan with repayment of interest and principal, a lender "buys" an item from the borrower, such as an appliance, and "leases" it back for a "rental payment." While most of these companies offer two-week "rental" periods, some assess "rental fees" daily. With catalog sale disguises, catalog companies require a borrower to purchase an item (a certificate) and they charge a fee for that item. Customers who need cash purchase catalog certificates ($20-$30 certificate per $100 loaned) for merchandise that is sold in the company catalog. Customers write a check for the amount of the loan plus the catalog certificate cost (loan fee). Two weeks later the company cashes the check and gives the customer the certificate, at which time they can use the certificate to purchase merchandise from the catalog.

14. *See, e.g.*, Turner v. E-Z Check Cashing, Inc., 35 F. Supp. 2d 1042 (M.D. Tenn. 1999); Burden v. York, No. 98-268 (E.D. Ky. Sept. 29, 1999); Hamilton v. HLT Check Exchange, 987 F. Supp. 953 (E.D. Ky. 1997); White v. Check Holders, Inc., 996 S.W.2d 496 (Ky. 1999); Commonwealth v. Allstate Express Check Cashing, No. HD-44-1 (Va. Cir. 1995).

15. 15 U.S.C. §§ 1601-1667f (2000). The TILA was passed by Congress in an effort to guarantee the accurate and meaningful disclosure of the costs of consumer credit and to enable consumers to make informed choices in the credit marketplace. The most significant disclosures required under TILA are the finance charge and the annual percentage rate. Without these disclosures it is impossible to determine the true cost of credit.

16. Truth in Lending (Regulation Z), 12 C.F.R. §§ 226.1-.33 (2000). Congress delegated broad authority for the implementation of the Truth in Lending Act to the Federal Reserve Board. The Board responded by promulgating a comprehensive set of Truth in Lending rules known as Regulation Z and an Official Staff Commentary on the Regulation. When assessing any transaction for compliance with any Regulation Z provision, the LAA should also review the corresponding commentary provision.

17. Truth in Lending, 65 Fed. Reg. 17,129, 17,131 (Mar. 31, 2000) (Official Staff Commentary to Regulation Z).

18. *See* National Consumer Law Center, Truth in Lending 58 (4th ed. 1999).

19. *Id.* at 49.

Commentary is designed to pierce these subterfuges. The Commentary's Supplementary Information states:

> Some commenters expressed concern that by referring specifically to "payday loans," the proposed comment might be limited to transactions labeled as such. Comment 2(a)(14)-2 has been modified to address this concern. Transactions in which the parties agree to defer payment of a debt are "credit" transactions regardless of the label used to describe them.[21]

Another potential way to attack these types of loans is under the Racketeer Influenced and Corrupt Organizations Act (RICO).[22] In the payday loan context, a claim arises under RICO where the state usury law is violated and the amount of interest charged or collected exceeds twice the cap.[23] Violating RICO is particularly significant for recovery purposes because the Act allows the consumer to hold individuals liable in addition to companies.[24]

Additionally, if the lender threatens or uses the criminal bad check law to collect the debt, such behavior may violate the state Unfair or Deceptive Acts or Practices Act (UDAP) as well as those state fair debt collection practices acts that apply to creditors as collectors.[25] It is an unfair or deceptive act because the lender knows the consumer does not have sufficient funds in the checking account at the time of the loan to cover the amount of the cash advance (hence the transaction does not involve the passing of a "bad" check). Therefore, it constitutes an unfair or deceptive act to threaten to do what the creditor has no legal right to do.

Viable defenses also exist even in those states whose laws expressly permit these transactions.[26] Many payday lenders fail to give TILA disclosures,[27] making it impossible to understand the true cost of these loans. Even when TILA disclosures are given, they are frequently inaccurate, or present additional information in such a way so as to violate the requirement that the disclosures be clear and conspicuous and separately segregated.[28] In addition, the doctrine of unconscionability can be used to challenge the amount of fees and interest that are charged in states with no caps.[29]

Lastly, practitioners should not overlook state UDAP statutes. Substantive unfairness and procedural unfairness and deception taken together may lead to actionable overreaching. This may be true even if the procedural defect is simply a failure to disclose the disadvantageous cost or nature of a loan. In the payday loan context, disguising a small loan as check cashing, and failing to disclose the interest rate and charges, constitutes a UDAP violation.[30] Similarly, disclosing a charge but listing it as a "carrying charge" rather than as "interest" states a UDAP claim.[31]

Legal Assistance Practitioners should be aware of the potential arguments they can make on behalf of service members who find themselves compounding their financial problems by using Payday Loans. More importantly, legal assistance attorney's, as part of the Preventive Law Program should aggressively seek to educate service members and their families on the dangers of payday loans. Major Kellogg.

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20. *Id.* at 58.

21. Truth in Lending, 65 Fed. Reg. at 17,130.

22. 18 U.S.C. §§ 1961-1968 (2000). The Act provides powerful civil remedies to victims of a broadly defined range of "racketeering activity" or to those who have been subjected to the collection of an "unlawful debt," which is defined as any usurious debt bearing interest of at least twice the "enforceable rate." *Id.* § 1961(6). For a detailed analysis of RICO, see NATIONAL CONSUMER LAW CENTER, UNFAIR AND DECEPTIVE ACTS AND PRACTICES 583-621, 799-804 (4th ed. 1997 and Supp.).

23. 18 U.S.C. § 1961(6).

24. *See, e.g.*, Fogie v. THORN Americas, Inc., 190 F.3d 889 (8th Cir. 1999); Jaguar Cars, Inc. v. Royal Oaks Motor Car Co., 46 F.3d 258 (3d Cir. 1995) (stating that officers or employees may properly be held liable under RICO as "persons" managing the affairs of their corporation as "enterprise" through pattern of racketeering activity).

25. NCLC, THE COST OF CREDIT, *supra* note 3, at 281-82.

26. *See supra* notes 6-12 and accompanying text.

27. *See supra* note 14.

28. Smith v. Cash Store Mgmt., Inc., 200 F.3d 511 (7th Cir. 1999) (court reinstated a TILA claim based on the creditor's practice of stapling a receipt over part of the TILA disclosure, listing the finance charge as a "deferred deposit check fee").

29. *E.g.*, Besta v. Beneficial Loan Co., 855 F.2d 532, 535 (8th Cir. 1988) (stating that a bargain is unconscionable "if it is such as no man in his senses and not under delusion would make on the one hand, and as no honest and fair man would accept on the other.").

30. NCLC, THE COST OF CREDIT, *supra* note 3, at 523-27.

31. *Id.*

Gulf War Syndrome Sub Judice

After ten years, 192 studies, and hundreds of millions of public and private research dollars, the jury is still out as to whether there is a Gulf War Syndrome or merely a collection of unrelated illnesses, let alone definitive answers as to a cause or a cure.[32] Nevertheless, the lack of definitive answers has not stopped a variety of litigation and legislative efforts to compensate Persian Gulf War veterans and their families. This article examines the more prominent of these efforts designed to aid those suffering from Gulf War Syndrome, why litigation will most likely fail, and why relief, if any, will probably have to come from the United States government.

One of the first targets for litigation by ill veterans and their families was the federal government. In *Minns et al. v. United States of America*,[33] three families sued the United States for negligence under the Federal Tort Claims Act (FTCA),[34] alleging that their respective children's birth defects were the result of experimental and defective vaccinations given to the servicemen fathers.[35] The district court dismissed their claims for lack of subject matter jurisdiction.[36] Almost any claim filed by a service member or their family member would meet with a similar fate due to the *Feres* Doctrine.[37] In *Feres v. United States*, the Supreme Court held that the United States has not waived its sovereign immunity for service members "where the injuries arise out of or are in the course of activity incident to [military] service."[38] The Court stated that civilian courts should not second-guess military decisions. Not only does the *Feres* Doctrine prevent suits by service members, but also derivative suits by their family members arising out of a service member's injuries.[39]

Applying the *Feres* Doctrine bar in Gulf War Syndrome cases follows a long list of precedents. Claims by family members for injuries were likewise barred in the Vietnam era Agent Orange defoliant cases and the atomic bomb test radiation exposure cases; cases in which the government's culpability was clearer than with the potential Gulf War Syndrome.[40] Any result other than dismissing these plaintiffs' claims would result in judicial review of the military's determination to inoculate, how, and with what.

In dismissing the plaintiff's claims, the *Minns* court found that the government's decision to vaccinate service members, and to not warn them or their family members of any potential side effects of these vaccinations, were "discretionary" functions.[41] Discretionary functions of the government are specifically excluded from the FTCA waiver of federal sovereign immunity.[42] Just as the *Feres* Doctrine is in part designed to prevent judicial second-guessing of military decisions, the discretionary function exception to the FTCA is also designed to prevent judicial review of the policy decisions of the executive and legislative branches of government. The district court's opinion was upheld on appeal, and the Supreme Court refused to hear the case on certiorari.[43]

The lawsuits on behalf of veterans and their families, however, have not been aimed solely at the federal government. *Marshall Coleman et al. v. Alcolac et al.*[44] involves a current class action of potentially 100,000 veterans claimed to have been injured by exposure to chemical and biological weapons allegedly used during the Persian Gulf War.[45] Filed in a Texas state court against twenty-seven companies, the plaintiffs allege that the defendant corporations were negligent in con-

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32. *Hearing on Gulf War Illness Before the Senate Comm. on Appropriations, Subcomms. on Labor, Health and Human Services, Education and related Agencies,* 106th Cong. (2000).

33. 974 F. Supp. 500 (D. Md. 1997).

34. 28 U.S.C. §§ 2671-2680 (2000).

35. *Minns*, 974 F. Supp. at 502.

36. *Id.* at 508.

37. Feres v. United States, 340 U.S. 135 (1950). For an overview of the *Feres* Doctrine and its application to the Gulf War Syndrome, see Kevin J. Dalton, *Comment: Gulf War Syndrome: Will the Injuries of Veterans and Their Families Be Redressed?*, 25 U. BALT. L. REV. 179 (1996); Claire Alida Milner, *Comment: Gulf War Guinea Pigs: Is Informed Consent Optional During War?*, 13 J. CONTEMP. H.L. & POL'Y 199 (1996); and William Brook Lafferty, *Comment: The Persian Gulf War Syndrome: Rethinking Government Tort Liability*, 25 STETSON L. REV. 137 (1995).

38. *Feres*, 340 U.S. at 146.

39. *Minns*, 974 F. Supp. at 503.

40. *Id.*

41. *Id.* at 506.

42. *Id.* at 505.

43. 155 F.3d 445 (4th Cir. 1998), *cert. denied*, 525 U.S. 1106 (1999).

44. 888 F. Supp. 1388 (S.D. Tx. 1995).

structing, manufacturing, and selling to Iraq chemical components or equipment used to make Iraqi chemical and biological weapons.[46] Begun in 1995, the litigation continues today.

In all likelihood, however, this attempt will fail just as the attempts against the federal government have failed. In the litigation dealing with Agent Orange, Vietnam veterans and their families claimed that the military's use of the defoliant caused injuries and sued the companies that produced it for, among other things, their failure to warn of the dangers of exposure to the chemical.[47] Those plaintiffs that did not accept a settlement offer lost in federal district court, in part because they were unable to prove successfully that their injuries were caused by exposure to Agent Orange.[48] In the case of Gulf War Syndrome, it is also likely, with the research to date, that the plaintiffs would be unable to prove, by a preponderance of the evidence, that the chemicals or equipment sold by the defendant corporations are responsible for the various illnesses they or their family members experience. It is more likely that the plaintiffs anticipate a settlement similar to that in the Agent Orange litigation, in which the defendant corporations created a 180 million-dollar fund for the sick veterans and their families.[49] The nexus between the hazards of Agent Orange and the manufacturer's failure to warn of its dangers is stronger, however, than that of the chemicals and equipment produced and sold by the defendant corporations and the existence, or foreseeability, of a Gulf War Syndrome.

Both avenues of litigation against the government and private corporations are therefore likely to fail. As stated in the appellate court decision of *Minns et al. v. United States*, while the court recognized that the parents of the disabled children were without a judicial remedy, it felt that it was up to Congress to provide the relief to these and other veterans and families suffering from the effects of the Gulf War Syndrome.[50] Congress has taken some steps in this direction. In 1992, Congress passed the Persian Gulf War Veterans' Health Status Act, creating a database of Gulf War veterans' health information to facilitate later research.[51] In 1994, Congress gave the Veteran's Administration the authority to pay disability payments to Persian Gulf War veterans suffering from chronic illness manifesting itself in any of thirteen symptoms, including fatigue, muscle pain, and sleep disturbances.[52] Reportedly, however, over ninety-three percent of the claims have been denied.[53] Congress also passed The Persian Gulf War Veterans Act[54] of 1998, establishing a presumption of a service-connection, and therefore a means of compensation and treatment, for illnesses associated with exposure to one or more of over thirty toxic agents present in the Persian Gulf War, much like the Agent Orange Act of 1991.[55] The Act will apply, however, only after a link is established between one of the toxins and the Gulf War Syndrome, a connection that has not yet been made.

Other legislative initiatives have been proposed. The Persian Gulf War Syndrome Compensation Act of 1999[56] would recognize Gulf War Syndrome as a war-related injury, and would make it easier for veterans and their families to receive disability and death benefits, even if the veteran's symptoms did not arise during their military service.[57] The bill has remained in committee since its introduction in August of 1999.[58] The Gulf War Veterans' Iraqi Claims Protection Act of 1999 is another legislative initiative to aid veterans.[59] It pro-

45. *Id.* at 1394.

46. *Id.*

47. *In re* "Agent Orange" Product Liability Litigation, 597 F. Supp. 740 (E.D.N.Y. 1984).

48. *In re* "Agent Orange" Product Liability Litigation, 611 F. Supp. 1223 (E.D.N.Y. 1985) (appellate court affirmed motion to dismiss on basis of Government Contractor Defense).

49. Hercules, Inc. v. United States, 516 U.S. 417, 420 (1996).

50. Minns v. United States, 155 F.3d 445, 453 (4th Cir. 1998).

51. Pub. L. No. 102-585, 106 Stat. 4975 (1992).

52. Compensation for Certain Disabilities due to Undiagnosed Illnesses, 38 C.F.R. § 3.317 (2000).

53. Don Manzullo, *Manzullo Unveils Legislation to Help Veterans with Gulf War Syndrome* (1999), *at* http://www.house.gov/manzullo/pr092799.htm.

54. Pub. L. No. 105-277, 112 Stat. 2681 (1998).

55. Pub. L. No. 102-4, 105 Stat. 11 (1991).

56. H.R. 2697, 106th Cong. (1999).

57. *Id.*

58. H.R. 2697, 106th Cong. (1999), LEXIS 1999 Bill Tracking H.R. 2697.

59. H.R. 618, 106th Cong. (1999).

poses to authorize the Foreign Claims Settlement Commission of the United States to process claims of Gulf War veterans against the billions of dollars of Iraqi assets frozen in United States banks. Veterans would have priority of awards and would be eligible to receive up to $100,000 each. The Act was passed by the House and is now before a Senate committee.[60]

While no legislation can cure ill veterans or their families, Congress has at least taken initial steps towards helping them. As stated in *Minns et al. v. United States*, there is unlikely to be any judicial remedy for these plaintiffs. If there is to be any relief for the victims of Gulf War Syndrome, it will have to be provided by Congres s .Captain (Retired) Swank.

Reserve Component Note

New Rights for Reserve and National Guard Soldiers Suffering Heart Attack or Stroke

A fifty-year-old sergeant first class in the United States Army Reserve reports for inactive duty "drill" weekend on Saturday at 0700. He feels fine. In fact, he has always enjoyed excellent health. At 1500, he departs on a formation run with his unit. At 1510, he remarks to the soldier next to him that his left arm feels "funny." At 1513, he collapses. The emergency room diagnosis is quick and certain: the soldier suffered a serious, permanently disabling heart attack. Until recently, this sergeant first class would not have been eligible for veterans' benefits.

Congress recently amended Title 38 of the United States Code to correct this problem by expanding eligibility for veterans' benefits. Legal advisors involved in line of duty investigations need to understand the scope—and limitations—of this change.

Section 301 of the Veterans Benefits and Health Care Improvement Act of 2000[61] now defines any period of service in which an individual was disabled or died from an acute myocardial infarction (heart attack), a cardiac arrest, or cerebrovascular accident (stroke) as "active military, naval, or air service" for purposes of veterans' benefits laws.[62] The reason for the change appears clear from the legislative history. The provision was enacted to render heart attacks or strokes suffered during any type of military duty as "service-connected."[63]

The Department of Veterans Affairs (VA) is implementing the law in accord with that intent. The director of the VA recently disseminated written guidance establishing entitlement to service connection for heart attacks and strokes incurred while performing (or in transit to or from) inactive duty for training.[64]

Neither the statutory change nor the VA guidance address the question of whether a heart attack or stroke which is the natural progression of long-term disease, as opposed to an acute injurious event, is now covered. Line of duty (LOD) officers often struggle with this question. The September 1986 version of *Army Regulation 600-8-1*[65] states that medical evidence of natural progression overcomes the normal presumption that military service aggravates a medical condition.[66] Courts have drawn the same conclusion, determining that heart attacks during periods of short duty were the manifestations of disease existing prior to the duty—that is, existing prior to service (EPTS)—rather than injuries or aggravation of injuries suffered during duty.[67]

The new law authorizes no change to this process in military line of duty investigations. If an EPTS condition is not aggravated by military service, *Army Regulation 600-8-1* directs a finding of "not in line of duty—not due to own misconduct."[68]

Line of duty officers may still have to make a "not in line of duty" finding for heart attacks or strokes incurred during short

60. H.R. 618, 106th Cong. (1999), LEXIS 1999 Bill Tracking H.R. 618.

61. Pub. L. 106-419, 114 Stat. 1822 (2000).

62. *Id.* § 301, 114 Stat. 1822, 1852 (amending 38 U.S.C. § 101(24) (2000).

63. *See* 146 CONG. REC. H 9944 (2000) (statement Rep. Stupak). "My bill closes an exceptionally problematic loophole . . . . My bill would consider heart attacks and strokes suffered by Guard and Reserve personnel while on 'inactive duty for training,' to be service-connected for the purpose of VA benefits." *Id.*

64. Fast Letter 00-90 from Director, Department of Veterans Affairs to All VBA Regional Offices and Centers (Dec. 4, 2000) [hereinafter Fast Letter] (directing VA examiners to obtain LOD determination or other supporting documentation to verify that disease or injury occurred while on duty)(copy on file with the author).

65. U.S. DEP'T OF ARMY, REG. 600-8-1, PERSONNEL—GENERAL: ARMY CASUALTY AND MEMORIAL AFFAIRS AND LINE OF DUTY INVESTIGATIONS (18 Sept. 1986) [hereinafter AR 600-8-1 (1986)], *superseded by* U.S. DEP'T OF ARMY, REG. 600-8-1, PERSONAL AFFAIRS: ARMY CASUALTY OPERATIONS/ASSISTANCE/INSURANCE (20 Oct. 1994). Practitioners should note that although AR 600-8-1 (1986) was replaced with the 1994 version, the later does not address Line of Duty (LOD) investigations. At present, there is no current regulation addressing LOD investigations, and practice has been to rely on the 1986 regulation as non-binding guidance.

66. AR 600-8-1 (1986), *supra* note 65, para. 41-9(e), (f).

67. *See* Stephens v. United States, 358 F. 2d 951 (Ct. Cl. 1966); Gwin v. United States, 137 F. Supp. 737 (Ct. Cl. 1956).

68. AR 600-8-1 (1986), *supra* note 65, para. 41-9 (e).

periods of military duty. However, they should remember that the VA uses the LOD factual record to help make its own determination of eligibility for veteran's benefits.[69] This makes an accurate and complete LOD investigative record critically important.

Line of duty investigating officers might be inclined to articulate a simple finding that a heart attack or stroke occurring during a short period of military duty is an EPTS condition, and leave it at that. However, the LOD record must accurately reflect the timing and progression of symptoms in these cases, in relation to both the period of duty and the period of travel to and from the duty. This will allow the fairest possible determination of the facts and entitlement by the VA.

The new liberalized law may also provide recourse for veterans previously ineligible for VA benefits as the result of heart attack or stroke suffered during short periods of military duty.[70] Affected veterans may want to consider reapplying for benefits. Major Culver.

69. Fast Letter, *supra* note 64.

70. *See* 38 C.F.R. § 3.114 (2000). If a "liberalizing" law is passed, this regulation lays out rules for calculating retroactive entitlement.